

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED

JAN - 7 1999

RECEIVED  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )

Assessment and Collection )  
of Regulatory Fees for )  
Fiscal Year 1999 )

MD Docket No. 98-200

COMMENTS OF LOCKHEED MARTIN CORPORATION

Lockheed Martin Corporation ("Lockheed Martin") hereby submits its comments in the above-captioned rulemaking proceeding.<sup>1</sup> The Commission's annual proceeding to revise regulatory fees is intended to ensure that those fees are assessed equitably among subject FCC licensees in a manner reasonably related to the benefits that the payor receives and otherwise in the public interest.<sup>2</sup> In pursuit of those objectives, the Commission should correct a major discrepancy in its proposed regulatory fee structure, the assessment of GSO regulatory fees on a strict *per satellite* basis, that places GSO satellite system operators at a competitive disadvantage *vis-a-vis* NSGO competitors by imposing disproportionately high regulatory fees on GSO systems. In addition, the Commission should decline the invitation to implement a regulatory

<sup>1</sup> Lockheed Martin is the licensee of the Astrolink™ System, a global geostationary satellite orbit ("GSO") fixed-satellite service ("FSS") Ka-band satellite network. Lockheed Martin also has pending before the Commission applications for (i) certain modifications to the Astrolink™ authorization; (ii) a second-round GSO FSS Ka-band satellite system (Astrolink-Phase II™); (iii) a non-geostationary satellite orbit ("NGSO") FSS satellite system that will operate in Ka-band and V-band frequencies (the LM-MEO System); and (iv) a nine-satellite GSO system that will operate in the V-band.

<sup>2</sup> See 47 U.S.C. § 159.

No. of Copies rec'd  
List ABCDE

014

No. of Copies rec'd  
List

category for "new services" to its cost accounting system, and it should continue to assess regulatory fees only for those NGSO systems that have operational satellites.

**I. The Commission's Regulatory Fee Structure Should Treat GSO and NGSO Satellite System Operators Equitably.**

The cost of regulating an integrated system of technically identical, commonly owned satellites naturally is less than the cost of regulating the same number of separate one-satellite systems, each with different ownership, technical characteristics and service offerings. This regulatory efficiency is the logical foundation of the Commission's approach to NGSO regulatory fees: a flat fee per system, regardless of the number of satellites. However, the *orbit* occupied by a particular satellite system does not have any direct impact on the cost of regulating that system, nor does the orbit determine the benefit that the system receives from FCC regulation. This fact is already recognized by the FCC because all NGSO satellite operators, regardless of their individual orbit architecture, pay regulatory fees on a *per system* basis. This is not, however, the case with respect to GSO satellite operators, which currently pay such fees on a *per satellite* basis. Although perhaps a suitable approach in the days of single-satellite bent-pipe GSO systems and NGSO systems with only a handful of space stations, this approach is no longer viable in an era when integrated multi-satellite GSO constellations must compete head-to-head with NGSO systems comprised of hundreds of satellites.

The regulatory fee imposed on GSO operators increases dramatically in direct proportion to the number of satellites in the GSO system. In 1998, the NGSO regulatory fee was \$164,800 per operational system; the GSO fee was \$119,000 per operational satellite in orbit.<sup>3</sup> Thus, every

---

<sup>3</sup> See 47 C.F.R. § 1.1156 (1998).

GSO system comprised of more than one satellite always will pay a higher annual regulatory fee than any competitive NGSO system, with no regard for the efficiencies associated with regulating multi-satellite systems, without regard to bandwidth allocated or used, and without regard to system capacity. As an example, when fully deployed (and using the FY 1998 fees), the licensed nine-satellite Astrolink™ System would be required to pay an annual regulatory fee of \$1,053,000, which is more than *six times* the \$164,800 regulatory fee that an 840-satellite NGSO system would pay, even though the latter may command dramatically greater spectrum, orbital and regulatory resources. This \$888,200 fee differential is not only substantial on an annual basis, it will total many millions of dollars over the operational lifetime of the Astrolink™ System.

Although the number of satellites deployed may have some bearing on the costs and benefits of regulation, a "flat fee" or "maximum fee" approach, such as that assessed for NGSO systems, better reflects the true costs and benefits of satellite system regulation.<sup>4</sup> Moreover, the Commission's regulatory fee approach should be technology neutral: in the absence of a clear fiscal basis for a distinction, the FCC's fee rules should not favor one technology over another. Grossly disproportional annual regulatory fees for GSO versus NGSO systems can have

---

<sup>4</sup> The Communications Act requires that regulatory fees must bear some reasonable relationship to the benefits that the payor receives from the Commission's "enforcement activities, policy and rulemaking activities, user information services and international activities." *See* 47 U.S.C. § 159. Moreover, the FCC's regulatory activities generally benefit satellite system operators equally by facilitating commercial operations, regardless of whether they employ a GSO or NGSO system architecture.

unintended and undesirable competitive consequences and will place Astrolink™ and other GSO systems at an unfair disadvantage *vis-a-vis* their NGSO competitors.<sup>5</sup>

To treat GSO and NGSO operators equitably, and to preserve and promote competition among all providers of satellite communications services, the Commission should establish a uniform, per system cap on regulatory fees which will apply equally to both GSO and NGSO satellite operators.<sup>6</sup> Indeed, the FCC could assess lower regulatory fees on a per satellite basis for both GSO *and* NGSO operators (so that operators of single-satellite and smaller systems pay lower regulatory fees than large, multi-satellite system operators -- regardless of their system architecture), but the per system cap would be the maximum annual regulatory fee that any GSO or NGSO system operator would pay.<sup>7</sup>

---

<sup>5</sup> The Telecommunications Act of 1996 seeks to prevent such arbitrary discrimination among providers of similar telecommunications services. See H.R.Rep. 103-213, 103d Cong., 1st Sess. 494 (1993) (Conference Report). See also H.R.Rep. No. 103-111, 103d Cong., 1st Sess. 259-60 (House Report); *Implementation of Sections 3(n) and 332 of the Communications Act*, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1418 (1994) (similar commercial mobile radio services must be accorded similar regulatory treatment); *Implementation of Sections 3(n) and 332 of the Communications Act*, GEN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, 7996 (1994) (mobile services must be treated similarly if they compete against each other).

<sup>6</sup> For purposes of the cap on regulatory fees, a "satellite system" is defined as any number of satellites designed to operate as an integrated system and initially licensed during the same satellite processing round.

<sup>7</sup> GSO regulatory fees also could be calculated on a *per orbit location* basis rather than a *per satellite* basis. The FCC has assessed fees on a per orbit location basis in the context of FCC application fees, and its rationale for doing so applies equally to annual regulatory fees. See, e.g., Federal Communications Commission, Public Notice 56031, *Interim Filing Fee Payment Established for Ka-Band Satellite Applications* (Sept. 28, 1995) ("*Ka-Band Public Notice*") (assessing fees for GSO applicants per orbit location, rather than per satellite, "because of the evolution in geostationary satellite technology and the multiple geostationary space stations that applicants are anticipated to deploy in their systems"). However, to treat GSO and NGSO system operators equitably, the FCC should still impose the same per-system cap on regulatory fees for GSO and NGSO satellite systems.

## **II. The Commission Should Not Adopt a Separate Regulatory Category for "New Services" in Its Cost Accounting System.**

The Commission has requested comment on a proposal to create a separate regulatory category in its cost accounting system for "new services" where the Commission has not yet authorized a licensee.<sup>8</sup> Regulatory costs associated with these "new services" would be charged to the appropriate service. Lockheed Martin believes that such a proposal would be impractical to administer and contrary to the public interest, and therefore should be rejected.

A number of practical impediments make it difficult, if not impossible, to implement a new regulatory category for "new services" in the Commission's cost accounting system. First, there can be no uniform definition for "new services" in each existing payor category because technological developments and service refinements vary widely from service to service (*e.g.*, from terrestrial fixed services to broadcast services to FRS satellite services). Second, even within a single payor category, it would be difficult to determine whether developments in communications services should be considered "new services" subject to the allocation of additional costs or merely enhancements to existing services. For example, although new Kay-band satellite systems primarily will provide advanced broadband multimedia and data services, as well as traditional FSS services, existing C-band and Ku-band systems are providing similar "new services" today. Third, there is no basis to define "new services" by reference to the technological enhancements that regulatees seek to implement. Although many of the advanced broadband FSS systems licensed at Ka-band will employ a number of new satellite technologies,

---

<sup>8</sup> Although the proposal was made by certain payors of GSO satellite regulatory fees, such a change would impact payors in all services.

such as on-board processing and inter-satellite links, some licensees and second-round applicants have proposed more traditional satellite designs. Fourth, it is also impractical to define "new services" simply by reference to frequency bands. Although the Ku-band, for example, has received substantial FCC regulatory attention in support of FSS and BSS services over the years, it has received recently a vast amount of additional regulatory resources on behalf of incumbent and new users of the band as a result of GSO/NGSO sharing developments. New developments in other bands may require similar shifts FCC regulatory resources. Finally, the proper allocation of regulatory costs to "new services" would be extremely difficult. With respect to GSO/NGSO sharing issues at Ku-band, for example, it is not at all certain how the FCC could allocate its regulatory costs between protecting the interests of incumbent users versus promoting the interests of "new services" in the band. Attempting to do so would add unwarranted complexity, controversy and burden to the FCC's cost accounting system and regulatory fee process. In sum, a "new services" category for purposes of the FCC's regulatory fees would be difficult, if not impossible, to administer.

Furthermore, implementation of such a proposal would likely stifle the development of new communications systems and services in the United States. Deterred by the assessment of potentially enormous regulatory costs on a small number of innovative service providers, FCC regulatees may well seek to circumscribe potential enhancements in communications systems and services to avoid classification as a "new service." Not only would this undermine well-established Commission policies that facilitate competition and the development of new communications services, it also would undermine the United States' position as the world's leader in communications and the significant public interest benefits resulting therefrom. Thus,

implementing a "new services" category for regulatory fee purposes would be contrary to the public interest and should be rejected by the Commission.

**III. The Commission Should Impose Regulatory Fees Only On NGSO Satellite System Operators Which Have Operational Satellites.**

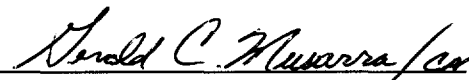
The Commission also sought comments on a proposal from Orbital Communications Corporation ("Orbcomm") to recover regulatory expenses from all NGSO licensees, rather than from only those that have launched satellites. NGSO satellite systems require years to develop and involve the commitment of enormous capital resources for construction and launch. Imposing hundreds of thousands of dollars in annual regulatory fees on non-operational systems would establish a significant, new financial barrier to entry for NGSO system proponents and would discourage the development of new and improved satellite services using NGSO satellite system technology. Accordingly, the Commission should reject Orbcomm's proposal to impose regulatory fees on all NGSO satellite licensees.

Respectfully submitted,

LOCKHEED MARTIN CORPORATION

Stephen M. Piper  
Vice President and General Counsel  
Lockheed Martin Global Telecommunications, Inc.  
6701 Democracy Boulevard, Suite 900  
Bethesda, MD 20817

January 7, 1999

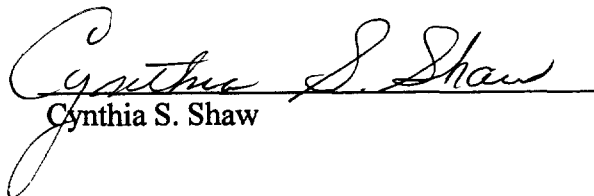
By:   
Gerald C. Musarra  
Vice President, Government and  
Regulatory Affairs  
Lockheed Martin Global  
Telecommunications, Inc.  
Crystal Square 2, Suite 403  
1725 Jefferson Davis Highway  
Arlington, VA 22202

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, do hereby certify that on this 7th day of January 1999, a copy of the foregoing Comments of Lockheed Martin Corporation was sent via hand delivery to the following:

Terry Johnson\*  
Office of Managing Director  
Federal Communications Commission  
445 - 12th Street, S.W., Room 1-C807  
Washington, D.C. 20554

International Transcription Service\*  
1231 20th Street, N.W.  
Washington, D.C. 20037

  
Cynthia S. Shaw

January 7, 1999

\*3½ Diskette enclosed